

## **REMARKS/ARGUMENTS**

**This paper/amendment includes a Petition to Revive Under 37 CFR 1.137(b)**

**This paper includes a Change of Address.**

### **Status of the Application:**

#### **Disposition of the Claims:**

Claims 1 to 35 are presented for examination. Claims 1, 2 and 35 are rejected under 35 USC 102(b) as being anticipated by Relihan (US 4,590,603). Claims 3 to 34 are rejected under 35 USC 103(a) as being unpatentable over Relihan. No claim is allowed; no claim is indicated as reciting allowable subject matter.

#### **Status of the Detailed Description and Abstract:**

No objection is made to the Detailed Description or the Abstract.

#### **Status of the Drawings:**

No objection is made to the drawings filed 03/01/2000.

#### **Status of the Priority Claim:**

The examiner has acknowledged receipt of a certified copy of FR 99 02711 filed March 4, 1999 in support of the priority claim under 35 USC 19(a)-(d).

#### **Status of the Information Disclosure Statement:**

The examiner advises that the submitted Information Disclosure Statement is incomplete as the required PTO-1449 or equivalent has not been presented. Enclosed herewith is a new PTO/SB/08A identifying the documents submitted in the previously submitted Statement to include further documents and a new Information Disclosure Statement.

### **Amendment to the Detailed Description**

The Detailed Description has amended at pages 1, 2, 3, 4, 5 and 7 to provide a cross-reference to related application as required by current practice; to more accurately describe the disclosed embodiments; to correct or describe antecedent terminology; to revise the text for the headings; to correct typographical errors; and to identify reference characters in the drawing. The applicant believes that no new matter is presented by the amendment to the Detailed Description.

### **Rejection of Claims 1, 2 and 35 and Rejection of Claims 3 to 34**

Claims 1, 2, 5, 6, 9, 10, 12, 13, 16, 17, 20, 21, 23, 24, 27, 28, 31, 32, 34 and 35 have been amended and new claim 36 is presented. Claims 3, 4, 7, 8, 11, 14, 15, 18, 19, 22, 25, 26, 29, 30 and 33 are canceled.

The rejection of claims 1, 2 and 35 under 35 USC 102(b) is no longer relevant in view of the amended claims 1, 2 and 35.

Claims 3 to 34 are rejected under 35 USC 103(a) as being unpatentable over Relihan and Official Notice.

Independent method claim 1 and independent apparatus claim 35, as amended, now essentially recite the subject matter of canceled claim 3. The Examiner acknowledges that Relihan does not disclose “the specifics of estimating the SOD, using the ratio of squares of the distances, and adjusting the diaphragm to regulate gain of the system.” The Examiner argues that Official Notice be taken that these features and this Official Notice is the basis for rejecting for example original claim 3 as being unpatentable over Relihan under 35 USC 103(a). The applicant respectfully traverses the rejection for the following reasons.

The Examiner has not provided any substantiation to support the Official Notice requirement for the rejection of claims 3-34 under 35 USC 103(a). The applicant requests that the Examiner substantiate by a citation to analogous prior art that “the use of ratio of squares of the distance” and/or the “adjusting of a diaphragm” is “notoriously well-known in the X-ray art”. The CAFC has repeatedly held that the record must substantiate any rejection and the mere conclusion offered as “official notice” is inadequate. Even if such substantiation per se is provided the applicant requests that the Examiner satisfy the requirements of a rejection under 35 USC 103(a) by persuasively demonstrating that there is a motivation or suggestion in the prior art to modify Relihan. As noted claims 1 and 35 have been amended to recite features and specifics admitted by the Examiner not disclosed in Relihan. Still further, claims 1 and 35 have been amended to recite features not disclosed in Relihan, to include that determining SOD and SID allows the control at the same time the radiation source, (i.e., dose) *and* the gain (image quality). In addition, claims 1 and 34 as amended should be considered as a whole. Even if substantiation is

provided, the Examiner is required to persuasively demonstrate the merits of a rejection under 35 USC 103(a) with respect to the claims as a whole and avoid piecemeal examination or a dissection of the claims into separate features.

New claims 36 to 38 are presented herewith to further recite the features of an embodiment of the disclosed invention.

Claims 2, 5, 6, 9, 10, 12, 13, 16, 17, 20, 21, 23, 24, 27, 28, 31, 32 and 34 are each dependent on amended claim 1 and are considered patentable for the same reasons as claim 1. New claim 36 is dependent on amended claim 35 and is considered patentable for the same reasons as claim 35. New claims 37 and 38 are considered patentable for the same reasons as claim 1 and 35.

Applicant respectfully requests that a timely Notice of Allowance be issued in this application.

Respectfully submitted,

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